

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Murgio	Team: Squad #2	CCRB Case #: 202101617	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/04/2020 8:15 PM, Thursday, 11/05/2020 12:15 AM	Location of Incident: 5th Avenue and East 8th Street; 1 Police Plaza	Precinct: 06	18 Mo. SOL 5/4/2022	EO SOL 5/4/2022	
Date/Time CV Reported Wed, 03/17/2021 4:56 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 03/17/2021 4:56 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. DT3 Philip Giardina	4832	956676	NARCBQS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Daniel Magrino	25070	963131	013 PCT
2. POM Gregory Mcnamara	07058	953091	SRG 4
3. POM Harrison Graf	25835	964025	009 PCT
4. POM Dennis Peng	20134	962674	SRG 4
5. Balkaran		967760	
6. POM Gregory Acerra	06077	952380	SRG 5
7. POM Dennis Samuels	15871	957128	SRG 1
8. POM Elvir Lekperic	05826	960793	SRG 3
9. POF Jennifer McGowan	05462	958903	SRG 5
10. POM Matthew Obrien	19663	937549	DIS CTL
11. POM Paul Rau	28460	944156	SRG 2
12. POM Jason Thompson	21577	928932	SRG 1
13. POF Victoria Hurchey	09794	960694	SRG 5
14. POM Thomas Quevedo	05154	951094	SRG 5
15. SGT Craig Sikorski	02196	949913	009 PCT
16. SGT Joshua Gregory	01456	949062	SRG 3
17. SGT Peter Cybulski	05073	954683	MTS PCT
18. AC Stephen Hughes	00000	874365	PBMS
19. CPT STEPHEN SPATARO	00000	939513	006 PCT
20. DI Andrew Hillery	00000	925457	SRG 1
21. CPT David Miller	00000	911741	DIS CTL
22. LT Kevin Mulhern	00000	948390	102 PCT
23. POM Brian Brandefine	21864	963880	006 PCT
24. SGT Nikolaos Stefopoulos	04686	944294	SRG 5

<b>Witness Officer(s)</b>	<b>Shield No</b>	<b>Tax No</b>	<b>Cmd Name</b>
25. SGT Charles Miele	04711	939037	SRG 1
26. SGT David Lamarre	03547	947929	SRG 3
27. SGT Daniel Hachemeister	03870	949074	SRG 5
28. POM Kino Cox	23631	938280	SRG 2
29. CPT SHAWN TUTHILL	00000	937659	NBQS MAJOR

  

<b>Officer(s)</b>	<b>Allegation</b>	<b>Investigator Recommendation</b>
A. An officer	Force: An officer used physical force against § 87(2)(b)	
B. An officer	Force: An officer struck § 87(2)(b) with a baton.	
C.DT3 Philip Giardina	Off. Language: Detective Philip Giardina made an offensive gesture to § 87(2)(b)	

## Case Summary

On March 17, 2021, § 87(2)(b) filed this complaint online via the CCRB website.

On November 4, 2020, at approximately 8:15 p.m., § 87(2)(b) and § 87(2)(b) who do not know one another, were at a protest that had begun at Washington Square Park and traveled around in the streets of lower Manhattan. When the protest reached the intersection of East 8<sup>th</sup> Street and 5<sup>th</sup> Avenue, demonstrators stopped for a time. Officers began arresting civilians, at times using force to effect arrests (The broader use of force by officers during the larger context of this incident is being addressed in CCRB case #202007314). § 87(2)(b) was allegedly pulled off the sidewalk by an unknown officer and fell to the ground (**Allegation A: Force – Physical force (dragged/pulled) – § 87(2)(g)**). He was then struck by one or more unknown officers with batons (**Allegation B: Force – Nightstick as club (incl asp & baton) – § 87(2)(g)**). § 87(2)(b) and § 87(2)(b) were detained and brought to 1 Police Plaza.

At approximately 12:15 a.m. on November 5, 2020, while being walked out of 1 Police Plaza by Detective Philip Giardina of Queens South Narcotics, § 87(2)(b) witnessed Detective Giardina make a joke to officers whom they walked past, the punchline of which was the number three. Detective Giardina allegedly signified this punchline with a hand gesture in which his thumb and forefinger formed a circle while the other three fingers were splayed, which § 87(2)(g) believed to be intended as a “white power” hand symbol forming the letters “W” and “P” (**Allegation C: Offensive Language – Other – § 87(2)(g)**). § 87(2)(b) and § 87(2)(b) were both released with summonses for walking on the street when there was an available sidewalk (VTL 1156(A)), issued by Detective Giardina (Board Review 68, 69).

The CCRB received approximately 232 body-worn camera (BWC) videos from various officers who were present at the protest that this incident was part of. These videos are linked to IAs #93-121, 190, 204, and 220 (Board Review 01-32) and summarized in IAs #123-124, 132, 139-141, 192, 207, 222-224, and 229-232 (Board Review 33-47). Cellphone and other personal recording device videos obtained from social media, some of which show the location of this incident, are linked to IAs #183, 184, 187, 214, 218, and 226 (Board Review 48-53) and summarized in IAs #193, 194, 215-216, and 227 (Board Review 54-58).

## Findings and Recommendations

**Allegation (A) Force: An officer used physical force against § 87(2)(b)**

**Allegation (B) Force: An officer struck § 87(2)(b) with a baton.**

§ 87(2)(b) was interviewed via telephone on March 30, 2021 (Board Review 59). Detective Giardina was interviewed at the CCRB on August 3, 2021 (Board Review 60). § 87(2)(b) was interviewed by telephone on September 17, 2021 (Board Review 61). Captain Stephen Spataro of the 6<sup>th</sup> Precinct was interviewed by the CCRB on January 19, 2022 (Board Review 62). Contact attempts were exhausted to § 87(2)(b) a third individual to whom Detective Giardina issued a summons following this incident, but he did not respond to the contact attempts.

§ 87(2)(b) testified that an officer, whom he described as an over 6’0” tall white male in his 30s or early 40s with a broad or wide muscular build and an orange beard, who was equipped with a helmet and shield and wearing a “tactical” NYPD uniform, grabbed him by his arm or possibly the front of his person. § 87(2)(b) turned, and the officer pulled him backwards off of the sidewalk. § 87(2)(b) was pulled into the street and fell on his back. An officer or officers (possibly the same officer, but § 87(2)(b) did not know) struck § 87(2)(b) with a baton or batons, causing his mask

to break. After being brought to the ground, § 87(2)(b) did not see much of the bearded officer. This officer was not the one who processed § 87(2)(b) and issued him a summons once he was handcuffed.

No incidents matching the one described by § 87(2)(b) were identified in the BWC or cellphone or surveillance videos obtained by the investigation.

§ 87(2)(b) testified that at the intersection of East 8<sup>th</sup> Street and 5<sup>th</sup> Avenue, officers “kettled” protestors and grabbed people to make arrests. § 87(2)(b) was not able to describe officers or say what they saw officers doing, as the incident became a “blur” during the physical altercations between officers and protestors. After § 87(2)(b) was handcuffed and brought to a police van, they saw a white male with a broken mask who asked a Black male officer why he had pulled him off of the sidewalk (This civilian may have been § 87(2)(b) but the investigation could not definitively determine this).

Detective Giardina stated that when he responded to the incident location, there was a protest involving a large crowd of “a couple hundred” demonstrators in the street. He was not certain of the number of officers present but believed that there were approximately 100 officers present. The people in the crowd were told to disperse but did not. Detective Giardina was instructed by a white-shirted higher-ranking officer whom he did not know and whom he could not describe “that after the warning, we were going to walk towards, to clear the street, and if they were in the street, arrests were to be made.” Officers proceeded to arrest civilians in the street as per the instruction. Detective Giardina specifically saw § 87(2)(b), § 87(2)(b), and § 87(2)(b) in the street at the intersection of East 8<sup>th</sup> Street and 5<sup>th</sup> Avenue. He recalled being involved in handcuffing § 87(2)(b) and walking them to a transportation van but did not mention any interaction with § 87(2)(b) and § 87(2)(b) at the scene.

Captain Spataro based his recollections of the incident on his review of his BWC footage, as his recollections outside of the BWC footage were “minimal.” He did not specifically recall the level of force he witnessed, as the scene at the intersection of East 8<sup>th</sup> Street and 5<sup>th</sup> Avenue was “chaotic.” He did not recall witnessing officers using batons or asps. He did not witness officers using a level of force that would rise to a level requiring a Threat, Resistance, and Injury Report against any civilians who were not actively resisting by refusing to place their hands behind their backs, flailing their arms, twisting their torsos, and pulling away. He saw some protestors who were “actively, physically resisting...being guided down to the ground.”

Some detail rosters were obtained from Patrol Borough Manhattan South (Board Review 63). Some of the rosters had post or sector numbers, though not all of them had this information. Furthermore, no explanations or maps were provided to explain what these numbers meant. Not all of the rosters listed a specific location where officers were stationed. Detective Giardina was not listed among the officers named on these rosters, despite being present at the incident location.

§ 87(2)(g)  
[REDACTED]

**Allegation (C) Offensive Language: Detective Philip Giardina made an offensive gesture to**

§ 87(2)(b)

§ 87(2)(b) testified that Detective Giardina walked them out of the arrest processing center after they were released. While walking out, § 87(2)(b) heard Detective Giardina make a joke to other officers nearby. The punchline of the joke was the number three, and Detective Giardina signified this with a hand gesture in which his thumb and forefinger formed a circle while the other three fingers were splayed, which § 87(2)(b) believed to be intended as a “white power” hand symbol forming the letters “W” and “P”. § 87(2)(b) did not recall the joke itself.

§ 87(2)(b) believed that those who were arrested or issued summonses were released one at a time. He was not walked out by Detective Giardina and did not see any hand signs made by the officers who walked him out. He did not see any officers making any gestures that seemed questionable.

Detective Giardina had no recollection of the incident § 87(2)(b) described. He denied ever making the hand symbol described by § 87(2)(b) (or any similar symbol) in § 87(2)(b)'s presence. He did not see any other officer make this hand symbol in § 87(2)(b)'s presence and never became aware of an officer making the hand symbol in § 87(2)(b)'s presence. Detective Giardina was only familiar with the hand symbol described by § 87(2)(b) as representing the number three.

§ 87(2)(g)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 64).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 65).
- Detective Giardina has been a member of service for seven years and has been a subject in one additional CCRB complaint and one additional allegation, which was not substantiated.

§ 87(2)(g)

**Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- On February 14, 2022, a FOIL request for Notices of Claim was submitted to the New York City Office of the Comptroller. Any response will be added to the case file upon receipt.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 66).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 67).

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Squad: 2

Investigator:	<u>Rachel Murgu</u> Signature	<u>Inv. Rachel Murgu</u> Print Title & Name	<u>02/16/22</u> Date
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Squad Leader:	<u>Alexander Opoku-Agyemang</u> Signature	<u>IM Opoku-Agyemang</u> Print Title & Name	<u>2/16/2022</u> Date
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Reviewer:	<u></u> Signature	<u></u> Print Title & Name	<u></u> Date
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